

BOARD OF APPEALS CASE NO. 5175

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BEFORE THE

APPLICANTS: Karl & Laura Houser

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ZONING HEARING EXAMINER

REQUEST: Variance to construct a detached garage larger than 50% of the habitable space of the dwelling; 3326 Charles Street, Fallston

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OF HARFORD COUNTY

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Hearing Advertised

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Aegis: 9/26/01 & 10/3/01

HEARING DATE: November 14, 2001

Record: 9/28/01 & 10/5/01

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ZONING HEARING EXAMINER'S DECISION

The Applicants, Karl & Laura Houser, are requesting a variance, pursuant to Section 267-26C(1) of the Harford County Code, to construct a detached garage larger than 50% of the habitable living space of the principal residence in an AG/Agricultural District.

The subject property is located at 326 Charles Street, Fallston, Maryland 21047 and is more particularly identified on Tax Map 38, Grid 1F, Parcel 159, Lot 3. The parcel consists of 2.005 acres, is zoned AG/Agricultural and is entirely within the Fourth Election District.

The Applicant, Mr. Karl D. Houser, appeared and testified that he is the owner of the subject parcel and the Applicant herein. Mr. Houser stated that his present home is approximately 2,800 square feet of habitable living space. Although the lower level of the house is not finished, he intends to complete finishing the basement level which will bring the total square footage of the home to 4,200 square feet. The Applicant proposes to construct a 3,200 square foot two-story garage that is detached from and located somewhat to the side and rear of the existing home. To the rear of the home, the property slopes severely away from the house allowing the garage to be a walkout configuration. From the front of the property, the garage will look like a single-story structure. The garage doors open on the lower level looking away from the house and will not be visible from the road. The Applicant intends to store antique fire equipment in the garage and under the rear overhang.

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The Applicant amended his request at the hearing to include a 200 square foot rear addition that he hopes to use for a personal office/den for himself. He does not plan to allow anyone to live in the structure and stated his primary purpose in constructing such a structure was to support his hobby as an antique fire truck collector/restorer. He did not think his building was unlike barns, pole buildings and other structures located within the AG District and felt that his structure, because it will match the architecture of the existing home will be very compatible with the other residential uses around his property.

The Department of Planning and Zoning agrees that the subject property is unique and recommends approval of the subject request.

There were no persons who appeared in opposition to this request.

CONCLUSION:

The Applicants, Karl & Laura Houser, are requesting a variance, pursuant to Section 267-26C(1) of the Harford County Code, to construct a detached garage larger than 50% of the habitable living space of the principal residence in an AG/Agricultural District.

Section 267-26C(1) of the Harford County Code provides:

“Use limitations. In addition to the other requirements of this Part 1, an accessory use shall not be permitted unless it strictly complies with the following:

- (1) In the AG, RR, R1, R2, R3, R4 and VR Districts, the accessory use or structure shall neither exceed fifty percent (50%) of the square footage of habitable space nor exceed the height of the principal use or structure. This does not apply to agricultural structures, nor does it affect the provisions of §267-24, Exceptions and modifications to minimum height requirements. No accessory structure shall be used for living quarters, the storage of contractors' equipment nor the conducting of any business unless otherwise provided in this Part 1.”

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Harford County Code Section 267-11 permits variances and provides:

"Variances from the provisions or requirements of this Code may be granted if the Board finds that:

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Code would result in practical difficulty or unreasonable hardship.
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Code or the public interest."

The Maryland Court of Special Appeals has provided guidance in matters of variance requests and described a two-step analysis in determining whether such requests should be granted. According to the guidance provided by the Court, the variance process is a two-step sequential process:

1. The first step requires a finding that the property whereon structures are to be placed(or uses conducted) is, in and of itself, unique and unusual in a manner different from the nature of surrounding properties such that the uniqueness or peculiarity of the property causes the zoning provision to impact disproportionately upon the property. If this finding cannot be made, the process stops and the variance must be denied. If, however, the first step results in a supportive finding of uniqueness or unusualness, then the second step in the process is taken.
2. The second step is a demonstration whether unreasonable hardship (or practical difficulty) results from the disproportionate impact of the ordinance caused by the property's uniqueness exists." Cromwell v. Ward, 102 Md. App. 691 (1995).

In the instant case, the Applicant has failed to meet the standards set forth in Cromwell. While the Hearing Examiner agrees that the property has unique topographical characteristics including a severe slope to the rear, it is not the slope or any other unique characteristic of the land that requires or necessitates the requested variance. It is the slope that allows a two-story configuration with a lower level walkout. There are no disproportionate impacts on this property that result from topographical uniqueness.

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Even if the Hearing Examiner could stretch the first test, the Applicant's practical difficulty is of his own making. The Applicant is engaged in a very unique hobby that involves very large vehicles, namely fire engines. The Applicant currently owns an antique fire truck that is 30 feet long and has contracted to purchase a ladder truck that is substantially larger. The practical difficulty or hardship results not from the impact of the zoning ordinance but is of the Applicant's own making.

This Applicant intends to construct a building that is 115% as large as his existing home. The reason is simply because he wants to support his hobby. Pursuant to long standing principals of zoning law, a property owner is not entitled to a variance from the provisions of the Zoning Code simply because he or she wants one.

In establishing practical difficulty the Maryland Courts have provided some guidance and establish. At a minimum, that the following criteria be met:

- (1) Whether strict compliance with requirements would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome.
- (2) Whether the grant would do substantial injustice to applicant as well as other property owners in the district or whether a lesser relaxation than that applied for would do substantial relief.
- (3) Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

The Court went on to say that, "It follows that the unnecessary hardship...must relate to the land, not to the Applicant-Owner, hardship which is merely personal to the current owner of real property will not justify the granting of the variance. Anderson v. Board of Appeals, Town of Chesapeake Beach, 22 Md. App 28, 322 A 2d 220 (1974).

While the Applicant has an interesting hobby that is in and of itself relatively harmless, it is personal to his own circumstances and the size of his requested structure is related to the hobby, not the land. If personal desires or preferences were a legitimate basis for a zoning variance, zoning laws would be eviscerated and rendered meaningless.

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Despite the recommendation of the Department of Planning and Zoning, the Hearing Examiner has determined that granting the requested variance would substantially impair and eviscerate the purpose of the zoning ordinance and recommends denial of the Applicant's request for the reasons above stated.

Date NOVEMBER 27, 2001

William F. Casey
Zoning Hearing Examiner